IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Crl.Rev.Pet.No. 708 of 1998()

CRA.64/1996 of ADDL.SESSIONS COURT, KOZHIKODE
ST.5675/1995 of JUDL. MAGISTRATE OF FIRST CLASS-II KOZHIKODE

.....

REVN. PETITIONER:

V.K.SREENIVASAN, AGED 50 YEARS,
PEON, SYNDICATE BANK, KOYILANDY BRANCH,
KOZHIKODE DISTRICT

BY ADV. SRI CYRIAC THOMAS

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. M.GANGADHARAN NAIR, AGED 63,
S/O.GOVINDAN NAIR,
RESIDING AT "ANANDA BHAVAN",
PUTHIYANGOOR, ELATHUR VILLAGE,
KOZHIKODE DISTRICT.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH
BY ADV. SRI.K.A.SALIL NARAYANAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3642/1998 IN CRL.R.P.NO.708/1998

CLOSED.

SD/- K.R.UDAYABHANU, JUDGE

08/10/2007

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.R.P.No.708/1998-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 8th day of October, 2007

O R D E R

The accused in S.T.No.5675/1995 with respect to the offence under Section 138 of the Negotiable Instruments Act is the revision petitioner. He stands convicted and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for one month.

2. The case of the complainant is that the accused, who is a peon in Syndicate Bank, Kozhikode, who is known to the complainant, borrowed a sum of Rs.15,000/- on 26/12/1992 promising to repay the same and, on 15/03/1993 the accused issued the impugned cheque for Rs.15,000/-, which when presented got dishonoured for want of funds in the account of the accused. Despite the issuance of the lawyer notice demanding payment, no amount was received.

3. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P5 series. Defence examined DW1.

4. It is the case of the accused that he had issued certain signed blank cheques to one Tyagarajan alias Jayarajan (DW.1) to enable DW.1 to borrow money from others and that the above Jayarajan on the strength of one of the cheques issued by him borrowed the amount from the complainant. PW.1, the complainant has testified with respect to the transaction i.e., issuance of the cheque, dishonour of the same and issuance of the lawyer notice and receipt of the same by the accused. It stands established that the cheque was dishonoured for want of funds in the account of the accused. DW.1 who was examined at the instance of the accused did not support the defence version. He has denied the alleged version by the accused. Nothing is brought out in the cross-examination of DW.1 to discredit his version. In the circumstances, I find that the execution of the impugned cheques stands proved and the statutory presumptions stands unrebutted. Hence, I find that there is no reason to upset the findings of the courts below. The same are confirmed.

All the same the sentence is modified to imprisonment till the rising of the court and to pay a compensation of rupees fifteen thousand and in default to undergo simple imprisonment for one month. The revision petitioner/accused is granted three months time

to remit the amount of compensation. He shall appear before the Judicial Magistrate of the First Class-II, Kozhikode, on 07/01/2008 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.R.P.No.708/1998-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

O R D E R

8th October, 2007